
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

LYNN ALLEN JOHNSON, an individual, <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> USANA HEALTH SCIENCES INC., a Utah corporation, <p style="text-align: center;">Defendant.</p>	MEMORANDUM DECISION AND ORDER DEEMING MOOT DEFENDANT’S SHORT FORM DISCOVERY MOTION Case No. 2:17-cv-00652-RJS-DBP District Judge Robert J. Shelby Magistrate Judge Dustin B. Pead
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This matter is before the court on Defendant USANA Health Sciences Inc.’s Short Form Discovery Motion.¹ (ECF No. 123.) USANA seeks an order “compelling Plaintiff Lynn Allen Johnson to respond to USANA’s Request for Production of Facebook Messages.” Mtn p. 1. On June 17, 2020, the court entered an order requiring USANA to redraft the first discovery request seeking Facebook Messages “to narrow the scope of those items that are relevant to this case.” June 17, 2020 Order p. 3, ECF No. 121. USANA’s new discovery request is the subject of the instant motion. The court finds the motion now moot given Plaintiff’s response.²

USANA seeks the contents of Plaintiff’s social media accounts, including correspondence through Facebook Messages, from January 2011 to December 2012. USANA’s original discovery request states:

REQUEST FOR PRODUCTION NO. 16: Produce the contents of all social media accounts owned, created, maintained, or controlled by you from January 2011 to December 2012, including without limitation, any blogs in which you appear or otherwise participated, and your Facebook, Instagram, LinkedIn, and Twitter accounts.

¹ This case was referred to the undersigned from Judge Robert Shelby pursuant to [28 U.S.C. § 636](#) (b)(1)(A). (ECF No. 24.), (ECF No. 81.)

² The court decides this motion on the basis of the written memoranda of the parties. DUCivR 7-1(f).

Def.'s Short Form Mtn. Ex. B, ECF No. 99-2. USANA's redrafted request for Facebook Messages provides:

REQUEST FOR PRODUCTION NO. 16 (REDRAFT PURSUANT TO COURT ORDER):

Produce all your Facebook messages from January 1, 2011 to December 31, 2012, that mention, relate to, or are regarding: (1) USANA including without limitation its products and services; (2) Ariix including without limitation its products and services; (3) any other direct sales or network marketing company; or (4) Fred Cooper, Mark Wilson, Fred Yates, Ray Strand, Tim Sales, or any other person that was or currently is associated with Ariix.

Mtn. Ex. A, ECF No. 123-1.

Plaintiff argues "USANA's second attempt at the request did not narrow its request in any material respect" Op. p. 1. The court disagrees. The plain language of the request limits the search for messages relating to USANA, Ariix, other "direct sales or network marketing company[ies]", and certain individuals associated with Ariix. The revised request is more narrowly tailored; it does not seek "personal communications that do not mention anything related to this case", that the court found irrelevant in its prior order. (ECF No. 121 p. 3.)

Despite its objection, however, Plaintiff continues stating that she has "painstakingly reviewed all of her Facebook messenger messages concerning both USANA and Ariix (including mentions of select persons from both companies) for an entire two-year period as requested." Op. p. 1, ECF No. 124. After doing so, she produced a file "containing 630 Facebook messenger strings." *Id.* Thus, according to Plaintiff, the motion is now moot.

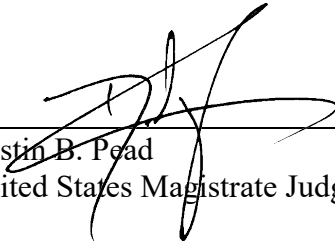
Based upon the information before the court, the court agrees with Plaintiff. She has produced messages from Facebook messenger that relate to this case. If Defendant seeks further

responses, Defendant may choose to employ a data discovery firm such as Xact Data Discovery. But prior to doing so, Defendant must show good cause for using such a firm, and it will be at Defendant's expense.

Accordingly, Defendant's Short Form Discovery Motion is deemed MOOT as Plaintiff has complied with the request.

IT IS SO ORDERED.

DATED this 18 September 2020.



Dustin B. Pead
United States Magistrate Judge